SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 39.

WILLIAM C. CHANDLER,
Petitioner,

vs.

WARDEN FRETAG.

On Writ of Certiorari to the Supreme Court of the State of Tennessee.

BRIEF ON THE MERITS FOR RESPONDENT.

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MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE.

On March 10, 1949, Petitioner was charged, by a three count indictment in the criminal Court of Knox County, Tennessee, with the offenses of housebreaking, larceny and receiving stolen property (R. 5). This indictment did not aver that Petitioner would be prosecuted as an habitual criminal. Following his indictment Petitioner was at

liberty on bond (R. 14, 21). On the habeas corpus hearing Petitioner testified that he was guilty of housebreaking and larceny and had no defense whatever to that (R. 14). He appeared in Court for trial on the housebreaking and larceny indictment on May 17, 1949, and was at that time first advised that he was to be tried as an habitual criminal (R. 14). He was accompanied by his wife and his brother, Reverend James Chandler (R. 18). Upon being advised that he was to be prosecuted under the Habitual Criminal Statute he requested the Judge to put the trial off and let him get an Attorney, but the trial Judge refused to grant this request (R. 14). It seems that the trial Judge had a set rule not to appoint Counsel for any Defendant able to make bond. He told Chandler that he had had from January to May to get a lawyer (R. 21). The evidence is in dispute as to the plea entered by Petitioner. Petitioner testified that he entered a plea only to the charge of housebreaking and larceny (R. 15). Assistant Attorney General Greenwell's testimony indicates that Petitioner also admitted his amenability to the Habitual Criminal Statute (R. 21). Greenwell's testimony is supported by the petition for the writ of habeas corpus filed by Petitioner's wife in his behalf, in which it is stated "that his plea of guilty of being an habitual criminal was not intelligently and knowingly entered" (R. 4).

It was further testified in behalf of Petitioner that on the trial no evidence of prior convictions was presented to the Jury (R. 14, 15, 18, 20). General Greenwell was positive that former judgments of conviction were read to the Jury (R. 21, 22). Petitioner admitted on the habeas corpus hearing that he had previously been convicted three times (R. 16). The trial of the indictment resulted in Petitioner's conviction of housebreaking and larceny and a finding by the Jury that he was guilty of being an habitual criminal. The judgment pronounced on the ver-

dict provided that Petitioner should be committed as an habitual criminal to the State Penitentiary for the remainder of his natural life (R. 7).

In its opinion on the habeas corpus case the Circuit Court of Knox County held that it was unnecessary for an indictment to contain notice that a Defendant would be prosecuted as an habitual criminal, because the charge of being an habitual criminal is not an independent offense (R. 34). In this connection the Court further held that the statute itself is sufficient notice (R. 36). The Court held that he waived his right to counsel (R. 34). The opinion of the Circuit Court was adopted as the opinion of the Supreme Court of Tennessee.

ARGUMENT.

Petitioner says that seven questions are presented to this Court for review. Respondent will endeavor to discuss these questions under three main topical headings.

I.

The Failure to Give Petitioner Pretrial Formal Written Notice, by Indictment or Otherwise, That He Would Be Tried as an Habitual Criminal, Did Not Violate His Rights Under the Federal Constitution.

Tennessee's Habitual Criminal Statute is Chapter 22 of the Public Acts of Tennessee of 1939, which is copied herein in Appendix A. The Act has since been amended but at the time of Petitioner's indictment, trial and conviction was in the form as it here appears. Section 1 of the Act defines an habitual criminal as any person who has been three times convicted in this State of felonies, two of which rendered him infamous under Code Section 11762, or were under certain designated Sections of the Code, or were for other offenses specifically named. The definition also includes convictions under the laws of any other State, Government or Country of similar crimes. It is provided that petit larceny is expressly excluded and is not to be counted as one of the three convictions. Section 2 of the Act provides that when an habitual criminal is convicted of any of the felonies referred to in Section 1, he shall be imprisoned in the Penitentiary for life. By Section 5 it is provided that the indictment for the fourth offense may or may not charge that the Defendant is an habitual criminal, but in either case the felony charged shall be deemed and construed as necessarily including and charging such person with being an habitual criminal. Section 7 provides for the admission in evidence of records of prior convictions.

Tennessee's Infamy Statute, Code Section 11762, is copied herein as Appendix B. This Section includes the of-

fenses of housebreaking, larceny, and receiving stolen property. Therefore the indictment in this case charged Petitioner with offenses for which life imprisonment could be imposed under Section 2 of the Habitual Criminal Act, if it be shown that Petitioner was an habitual criminal. The constitutionality of the Habitual Criminal Act was sustained by the Supreme Court of Tennessee in the case of McCummings v. State, 175 Tenn. 309, against the contention that allegations of former convictions must be included in the indictment.

This Court has on a number of occasions sustained habitual criminal or subsequent offender convictions by State Courts. Moore v. Missouri, 159 U. S. 673; McDonald vs Massachusetts, 180 U. S. 311; Graham v. West Virginia, 224 U. S. 616; Carlesi v. New York, 233 U. S. 51; and Gryger v. Burke, 334 U. S. 728.

In the opinion in McDonald v. Massachusetts it was stated that the Habitual Criminal Statute there involved simply imposed a heavier penalty on one convicted of a felony if he had been convicted of crimes before. The Court said at page 313: "The allegation of previous convictions is not a distinct charge of crimes, but is necessary to bring the case within the statute, and goes to the punishment only." The indictment in the McDonald case contained allegations of previous convictions.

In Graham v. West Virginia this Court approved the practice of proceeding against an habitual criminal by way of information following the conviction of the last offense. It was pointed out that in this proceeding he was not held to answer for an offense and that the information did not allege a crime. The Court stated that there was no occasion for an indictment. In this opinion the Court said:

> "Although the state may properly provide for the allegation of the former conviction in the indictment, for a finding by the jury on this point in connection

with its verdict as to guilt, and, thereupon for the imposition of the full sentence prescribed, there is no constitutional mandate which requires the state to adopt this course even where the former conviction is known. It may be convenient practice, but it is not obligatory. This conclusion necessarily follows from the distinct nature of the issue and from the fact, so frequently stated, that it does not relate to the commission of the offense, but goes to the punishment only, and therefore it may be subsequently decided."

It will thus be seen that in recidivist proceedings this Court has not regarded allegations of prior convictions as integral parts of the crimes charged that must be specifically pleaded by way of indictment. To the contrary it has been held that the fact of previous convictions goes to punishment only, and amply justifies an increased penalty for the latest offense. Tennessee follows the same reasoning. Tipton v. State, 160 Tenn. 664.

Thus far the States have been left free to determine for themselves the procedure to follow in calling to the attention of the sentencing authority the fact of prior convictions. The Massachusetts practice of averring them in the indictment for the last offense, as well as the West Virginia practice of proceeding by way of informatio-a following the conviction for the last offense, has been specifically approved. Tennessee's practice, at the time of Petitioner's conviction, was for the evidence of prior convictions to be presented to the Jury on the trial of the fourth offense. In that manner a Defendant is fully apprised of the previous convictions relied upon by the State and he has abundant opportunity to refute the State's evidence. He can deny that the convictions proved are such as to bring him within the Habitual Criminal Statute, and he can deny, and support his denial by evidence, that he is the person referred to by the records presented. At the time of sentencing he is well aware of the convictions

proved by the State and he knows then whether he is being punished under this statute. If he is dissatisfied with his conviction he has the right to appeal as in other criminal cases. Under the Tennessee practice there was no way for a Defendant to be hustled off to the Penitentiary under an habitual criminal life sentence without knowing the evidence relied upon and without having a full opportunity to cross-examine the witnesses against him and otherwise test the accuracy and reliability of the State's evidence of his former convictions. In the instant case the Petitioner had opportunity to do all these things. Despite his testimony to the contrary we think the evidence clearly shows that he was confronted with the records of previous convictions, and realizing that denial would be futile, readily admitted his guilt of being an habitual criminal.

Under the authority of other decisions of this Court Respondent respectfully insists that the due process clause of the Fourteenth Amendment does not require that matters of fact which might enhance punishment be formally pleaded, by way of indictment or otherwise.

In the case of Davis v. People, 151 U. S. 262, it was held that an indictment for murder is good, although it may not indicate, upon its face, in terms, the degree of crime and thereby the nature of the punishment that may be inflicted. It was held that the pleader need not indicate the degree, but that the indictment may leave the ascertainment of degree to the Jury. Such an indictment will support a conviction for murder in the first degree.

Davis v. People was followed by Bergemann v. Backer, 157 U. S. 655. This Court sustained a State Court conviction for murder in the first degree, under an indictment that did not aver, in terms, all the elements of that degree of the offense, against the contention that such procedure denied equal protection of the laws and due process. Ma-

terial to each of these cases was the fact that statutes authorized simplified indictments for murder in the first degree. The statutes that were involved also divided the common law crime of murder into two degrees and provided more severe punishment for the higher grade of the offense. The Davis and Bergemann cases are sound upon the reasoning that the statutes provided notice to anyone indicted under the simplified form for murder that he might be punished for the higher grade of the offense. It is axiomatic that all persons are charged with knowledge of the provisions of statutes. North Laramie Land Company v. Hoffman, 268 U. S. 276. Identical reasoning is applicable in the instant case. The Tennessee Court held in effect that the Habitual Criminal Statute itself is notice to an accused charged with one of the offenses therein enumerated that he might be subject to life imprisonment. We respectfully suggest that the effect of the Habitual Criminal Statute, as here applicable, was simply to amend the statutes punishing housebreaking, larceny and receiving stolen property, by providing that upon proof of three prior convictions, punishment for those offenses should be life imprisonment rather than the ten-year maximum. It can make no difference as far as Petitioner's rights are concerned that the implied amendment is carried in another statute, rather than being specifically set out in the Code Sections prescribing punishment for the three offenses.

Another reason that Petitioner's contention is lacking in merit is to be found in the proposition that the procedural requirements of due process for sentencing are entirely different to those applicable to determining the guilt or innocence of a Defendant. This was clearly pointed out in the case of Williams v. New York, 337 U. S. 241. There a Jury had found a Defendant guilty of murder in the first degree and had recommended life imprisonment. Following the verdict the trial Judge conducted what seems to have been an ex parte examination of the De-

fendant's character and background and considered a number of crimes thought to have been committed by Defendant but for which he had not been convicted. The Judge imposed the death sentence in the teeth of the Jury's recommendation, and his action was based in part at least upon the information obtained by the presentence investigation. This Court held that such procedure did not deny due process of law. In comparison with the practice followed in the Williams case it would appear that Chandler's rights were guarded zealously. Even though the evidence of prior convictions was material only in that it effected the punishment, Chandler, according to testimony presented for Respondent, at least had an opportunity to hear the evidence, cross-examine the witnesses, and deny the charge if he so chose. The Williams case points up quite clearly that in the matter of sentencing trial Courts have a wide range of latitude and may consider information derived from a variety of sources. Respondent suggests its obvious applicability here.

II.

The Trial, Conviction and Sentencing of Petitioner Without the Aid of Counsel Did Not Deprive Him of His Liberty in Violation of Rights Secured by the Fourteenth Amendment to the Constitution of the United States.

The Courts of Tennessee disposed of Petitioner's insistence as to denial of Counsel in the following manner:

> "As to being entitled to have counsel, he would be entitled to have counsel on the charge for which he stood indicted, namely, housebreaking and larceny, but he would not necessarily be entitled to notice that he would be tried on the offense of habitual criminal since the Statute is itself notice to an accused who is being tried for his fourth felony. It appears to the

Court in very strong circumstances that Chandler waived his right to counsel. To quote his own testimony, he said that he had no attorney to defend him on the charge of house-breaking and larceny because, 'knowing that I was guilty and I was going to plead guilty,' he considered it useless to employ counsel" (R. 34, 35).

"He was not denied any right to counsel because he had waived the right to counsel under the one thing that he could have been tried for and that was the crime of house-breaking and larceny" (R. 36).

We think that the foregoing statements are not unsound as a purely abstract legal proposition, although we realize full well that another tribunal might reach an entirely different conclusion on the question of waiver. Even so, it does not follow that Petitioner is thereby entitled to a reversal. This Court does not sit in review of mere errors of judgment committed by State Courts. If the State Court reached the proper conclusion it does not matter that that result was attained by the wrong route. In other words, the effect of the State Courts' holding was that the denial of Counsel did not operate to deprive Petitioner of his liberty without due process of law. If this is a correct conclusion, even though the reasoning be erroneous, the judgment of the State Court should be affirmed.

The due process clause of the Fourteenth Amendment does not require the States to furnish Counsel in every non-capital case. Betts v. Brady, 316 U. S. 455. There the Defendant was unable to employ Counsel and so advised the trial Judge. He requested that an Attorney be appointed to represent him but this request was declined. This Court affirmed the judgment of conviction and pointed out that the Defendant was not helpless, but was a man forty-three years old, of ordinary intelligence and ability to take care of his own interests on the trial of the issue before the

Court. The Court also referred to the fact that Defendant had once before been convicted in Criminal Court and was not wholly unfamiliar with that procedure.

Respondent urges that the situation here is quite similar to that before the Court in Betts v. Brady. The habeas corpus hearing failed to develop any special circumstances indicating that Petitioner was at a serious disadvantage by reason of the lack of Counsel. The petition for habeas corpus avers that Petitioner was a colored man, with little education and no technical legal training and no financial resources; that he was surprised, bewildered and confused and did not know that he was entitled to plead guilty on the housebreaking and larceny charge and at the same time plead not guilty to the habitual criminal accusation (R. 2). It was further averred that Petitioner entered his plea of guilty without knowingly, intelligently and understandingly knowing his rights or the consequences of such plea, except to the housebreaking and larceny charge (R. 3). The transcript of the testimony will be searched in vain for any evidence to support these allegations. It may have been that Petitioner was of limited mentality and education, but he did not so testify. It may have been that Petitioner was bewildered and confused by the legal processes which he was called upon to face, but he did not so testify. It may have been that he did not understand the consequences of the habitual criminal accusation, but he did not so testify. In short, there is an absolute absence of any evidence indicating a lack of ability on the part of Petitioner to take care of himself.

The meager gleanings from the record rather tend to support Respondent's insistence that Petitioner was in no wise over reached, and that he was not hampered by the lack of Counsel. He knew of his right to Counsel before he appeared for trial, because it is stated in his petition for habeas corpus that he knew his guilt on the house-

breaking and larceny charge and felt that an Attorney could do him no good on said charge (R. 2). He had not been incarcerated between the time of indictment and trial, because he had been at liberty on bond (R. 2, 14, 21). He was not tried and sentenced in the absence of friends and relatives, because his wife and brother were present (R. 18). He must not have been ignorant of Court procedure, because he had been convicted three times before (R. 16). He was not an immature youth, because his brother testified:

> "A. The Judge first asked me a question as to what we were going to do with William and I said that is a $64 question. Then the Judge motioned for me to come up and we talked and I mentioned some of the things my mother had said to me. I told him mother had informed me when he was a small child he was accidenfly hit in the head with an ax when we were residing at Concord some 43 years ago" (R. 17).

The habeas corpus case came on to be heard some three years after the trial of the criminal case. It follows that Petitioner must have been at least forty years old at the time of his conviction.

The trial of Petitioner as an habitual criminal presented a relatively simple issue. The question of his guilt of housebreaking and larceny was out of the way because he readily admitted that. The only question remaining for determination was whether he had previously been convicted of felonies that would bring him within the terms of the Habitual Criminal Act. Nobody knew better than he whether he had been so convicted. Had this accusation been unjust he could easily have denied it. As a matter of fact, the only logical inference is that he was subject to the Habitual Criminal Statute and well knew it at the time of his trial and conviction. Not only did he admit three previous convictions at the habeas corpus

hearing but he has consistently maintained a discreet silence about this feature of the case. Nowhere has he insisted that he had not been convicted for three felonies and he has not complained that the offenses were beyond the scope of Chapter 22 of the Public Acts of 1939. Nowhere does he attempt to explain his failure to appeal his habitual criminal conviction and thereby take advantage of the procedural machinery that would have enabled the Courts of Tennessee to investigate his claims in a more thorough manner. Respondent realizes that this Court will not determine the issue solely by the pragmatic test of whether Petitioner was or was not in fact an habitual criminal and actually subject to be sentenced as such. However the foregoing matters are pointed out as indicating that Petitioner has signally failed to show how Counsel could have been of any benefit to him.

On this habeas corpus hearing Petitioner was content to maintain a stony silence as to his background, his education, his knowledge of Court procedure, his financial resources and all other matters that would give a Court some insight into his ability to look after his own interests on the trial of the criminal case. We feel that this is fatal to his cause. Speaking of cases that had been reversed because of the lack of Counsel, this Court said in Foster v. Illinois, 332 U. S. 134, at page 137:

> "And so, in every case in which this doctrine was invoked and due process was found wanting, the prisoner sustained the burden of proving, or was prepared to prove but was denied opportunity, that for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in his confinement."

To the same effect see Quicksall v. Michigan, 339 U. S. 660. The Petitioner had the burden of proving that the denial of Counsel deprived him of the essentials of justice.

Hawk v. Olson, 326 U. S. 271. It makes no difference that he requested an opportunity to get counsel and his request was refused. Betts v. Brady, supra. Neither does it make any difference that the conviction was under the Habitual Criminal Statute and that a sentence of life imprisonment was imposed. Gryger v. Burke, 334 U. S. 728.

III.

Petitioner's Insistence as to the Ambiguity and Meagerness of the Trial Record Does Not Entitle Him to the Relief Sought.

Petitioner's complaint about this feature of the case is that the trial record is insufficient in that it does not recite his previous convictions in detail. This is simply a matter of local practice and does not raise a question under the Federal Constitution. The judgment recites that Petitioner is guilty of the offense charged and of being an habitual criminal, and imposes a sentence of life imprisonment (R. 7). This is sufficient under Section 6 of the Habitual Criminal Act, which does not require the judgment to recite previous convictions. Under Tennessee practice the fact of previous convictions is presented by way of evidence. Section 7, Chapter 22, Public Acts of 1939. The evidence in a criminal case may be preserved of record only by a Bill of Exceptions. Fine v. State, 183 Tenn. 117. The duty of preparing a Bill of Exceptions rests upon the dissatisfied party. Darden v. Williams, 100 Tenn. 414. Petitioner did not appeal his conviction and therefore no Bill of Exceptions was prepared.

SUMMARY.

The Fourteenth Amendment to the Federal Constitution does not require Tennessee to plead formaliy the evidence which it will present to show aggravation of the offense, in order to justify the infliction of a more severe penalty.

Petitioner has failed to sustain the burden of proving that for want of benefit of Counsel an ingredient of unfairness actively operated in the process that resulted in his confinement.

Petitioner's complaint as to the inadequacy of the trial record does not raise a Federal question.

Respondent respectfully insists that the judgment of the Supreme Court of Tennessee should be affirmed.

Respectfully submitted,

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of Tennessee,

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Of Counsel.

I, Nat Tipton, Attorney for Respondent and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 9 day of September, 1954, I

served a copy of this Brief on Counsel for Petitioner by depositing the same in a United States mail box, with first class postage prepaid, addressed to Honorable Earl E. Leming, 508 Empire Building, Knoxville, Tennessee.

Nat Tipton,
Assistant Attorney General
of Tennessee.

APPENDIX A.

Chapter 22 of the Public Acts of Tennessee of 1939.

CHAPTER NO. 22.

Senate Bill No. 96.

(By Lovelace and Newman.)

AN ACT defining habitual criminals, and providing for their punishment.

Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That any person who has either been three times convicted within this State of felonies, two of which, under Section 11762 of the Code of Tennessee, rendered him infamous, or which were had under Sections 10777, 10778, 10788, 10790 and 10797 of said Code, or which were for murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, or who has been three times convicted under the laws of any other state, government or country of crimes, two of which, if they had been committed in this State, would have rendered him infamous, or would have been punishable under said Sections 10777, 10778, 10788, 10790 and 10797 of said Code, or would have been murder in the first degree, rape, kidnapping for ransom, treason or other crime punishable by death under existing laws, but for which the death penalty was not inflicted, shall be considered, for the purposes of this Act, and is hereby declared to be an habitual criminal, provided that petit larceny shall not be counted as one of such three convictions, but is expressly excluded, and provided further that each of such three convictions shall be for separate offenses, committed at different times, and on separate occasions.

Section 2. BE IT FURTHER ENACTED, That, when an habitual criminal, as defined in Section 1 of this Act, shall commit any of the felonies as defined in Sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee,

or any other felony within this State, which under Section 11762 of the Code of Tennessee would render him infamous upon conviction, other than murder in the first degree, kidnapping for ransom, rape, treason, or other crime punishable by death under existing laws, or shall commit murder in the first degree, kidnapping for ransom, rape, treason or other crime punishable by death under existing laws, and upon conviction therefor the death penalty is not imposed as now provided by law, he shall, in either case, upon conviction, be sentenced as an habitual criminal, and his punishment shall be fixed at life in the penitentiary, and such offender shall not be eligible to parole, either as provided in Sections 11767 through 11777 of the Code of Tennessee, or in Sections 11797 (1) through 11797 (6) of said Code, nor shall said sentence be reduced for good behavior, for other cause, or by any means, nor shall the same be suspended.

Section 3. BE IT FURTHER ENACTED, That, nothing herein shall be construed or considered as seeking or tending to impair the pardoning power of the Governor.

Section 4. BE IT FURTHER ENACTED, That, when an habitual criminal, as defined in Section 1 of this Act, is charged, by presentment or indictment, with the commission of any felonies as defined in Sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee, or any other felony, conviction for which will render him infamous under Section 11762 of the Code of Tennessee, or for which the maximum punishment is death, he may also be charged therein with being an habitual criminal, as defined in Section 1 hereof, or may be charged only with the commission of such felony, but in either case, shall upon conviction, be sentenced and punished as an habitual criminal, as in this Act provided.

Section 5. BE IT FURTHER ENACTED, That, an indictment or presentment which charges a person who is

an habitual criminal, as defined in Section 1 hereof, with the commission of any felony as defined in Sections 10777, 10778, 10788, 10790 and 10797 of the Code of Tennessee, or a felony, conviction for which will render him infamous, or for which the maximum punishment is death, may or may not also charge that he is such habitual criminal, but in either case the felony charged shall be deemed and construed as necessarily including and charging such person with being an habitual criminal, and no such indictment or presentment shall be subject to any objection for failure to specifically include a charge that such person is an habitual criminal.

Section 6. BE IT FURTHER ENACTED, That, when an indictment or presentment charges an habitual criminal with a felony, as above provided, and also charges that he is an habitual criminal, as provided in Section 1, it shall only be necessary for the Jury, upon conviction, to find, and its verdict shall be, "We, the Jury, find the Defendant guilty as charged in the indictment," and whereupon the Court shall impose sentence as provided in Section 2 of this Act.

When an indictment or presentment only charges an habitual criminal with the commission of a felony, which, upon conviction therefor, will render him infamous, or for which the maximum punishment is death, if the verdict of the Jury shall be the general verdict, as above, sentence shall be imposed as now provided by law for the offense charged, but if the Jury also find that the Defendant is an habitual criminal, its verdict shall be that, "We, the Jury, find that the Defendant is an habitual criminal, and guilty, as charged in the indictment," and whereupon, sentence shall be imposed as provided in Section 2 hereof.

Section 7. BE IT FURTHER ENACTED, That, in all cases where a person is charged under the provisions of this Act with being an habitual criminal, the record, or

records, of prior convictions of such person upon charges constituting felonies, whether they were such as to carry with them a judgment of infamy under the laws of this State, shall be admissible in evidence, but only as proof that such person is, in fact, an habitual criminal, as herein defined, and a judgment of conviction of any person in this State, or any other state, country or territory, under the same name as that by which such person is charged with the commission, or attempt at commission, of a felony under the terms of this Act, shall be prima facie evidence that the identity of such person is the same.

Section 8. BE IT FURTHER ENACTED, That, the provisions of this Act are hereby declared to be severable. If any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this Act shall continue in full force and effect, it being the legislative intent now hereby declared, that this Act would have been adopted even if such unconstitutional or void matter had not been included therein.

Section 9. BE IT FURTHER ENACTED, That, all Acts, and parts of Acts, in conflict herewith, are hereby repealed.

Section 10. BE IT FURTHER ENACTED, That, this Act take effect from and after its passage, the public welfare requiring it.

Passed February 14, 1939.

Blan R. Maxwell,
Speaker of the Senate.

John Ed O'Dell,
Speaker of the House of Representatives.

Approved Feb. 21, 1939.

Prentice Cooper,
Governor.

APPENDIX B.

Section 11762 of the Code of Tennessee, as in Force at the Time of Petitioner's Conviction.

SECTION 11762 OF THE CODE OF TENNESSEE.

"When judgment renders defendant infamous.—Upon conviction of the crimes of abusing a female child, arson and felonious burning, bigamy, burglary, felonious breaking and entering a dwelling house, bribery, buggery, counterfeiting, violating any of the laws to suppress the same, forgery, incest, larceny, horse-stealing, perjury, robbery, receiving stolen property, rape, sodomy, stealing bills of exchange or other valuable papers, subornation of perjury, and destroying a will, it shall be part of the judgment of the court that the defendant be infamous, and be disqualified to exercise the elective franchise, and he shall also be disqualified to give evidence." (Note: This Section was amended by Chapter 64 of the Public Acts of 1941 so as to include the offense of "felonious breaking into a business house, out house other than a dwelling house.")